



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training



September 2017

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One of the duties of the Peace Officer Standards and Training (POST) Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these individuals in accordance with Utah Code 53-6-211 and 53-6-309. The decisions the council makes help to define acceptable and unacceptable conduct for Utah peace officers and certified dispatchers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct. This bulletin is intended to be used as a training document; therefore, it is the policy of POST not to use the names of individual officers or agencies, even though that information may be part of the public record.

On September 28, 2017, POST Council convened and considered eight cases of officer discipline.

### Case 1

Officer A took two television sets from the correctional facility where he worked and took them home in an attempt to resolve a problem with his cable television access. Officer A did not have permission to remove the televisions from the facility and failed to return them. During *Garrity* interviews with his agency and POST, Officer A admitted he took the televisions and said he forgot to return them.

Officer A's employment with his agency was terminated. No criminal charges were filed. The POST investigation determined Officer A's actions constituted wrongful appropriation, a class C misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended the certification of Officer A be suspended for three months. Officer A was present at the POST Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer A, the Council ratified POST's recommendation and voted to suspend Officer A's peace officer certification for three months.

### Case 2

Officer B submitted an application to POST to attend a satellite academy. At the beginning of the academy, Officer B attended an ethics class where the requirements of the POST application were thoroughly

explained. Officer B was given an opportunity to file an addendum to his application if he needed to disclose any additional information. Officer B completed the Verification of Application Information form. On the form, Officer B indicated he was not filing an addendum and no addendum was attached. Officer B completed the special function officer (SFO) training and received SFO certification. While Officer B was attending the academy, POST was notified that during a previous pre-employment polygraph interview Officer B admitted that, approximately six years earlier, he placed a camera in the bathroom of his residence to secretly record his wife's cousin as she undressed to shower. Upon receiving this information, POST opened an investigation.

During a *Garrity* interview with POST, Officer B initially said when he submitted his POST application, he did not know it was against the law to secretly record someone as they undressed. Officer B later said he first learned it was illegal during the polygraph interview. POST investigators observed Officer B completed the polygraph interview approximately 25 days prior to submitting his POST application and questioned Officer B about this discrepancy. Officer B changed his story once more and claimed he first learned it was illegal to record someone undressing when he was in the academy studying Utah law. The POST investigation determined Officer B had provided false information to obtain certification by not disclosing this incident.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended the certification of Officer B be suspended for two years. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer B's peace officer certification for two years.

### **Case 3**

Officer C contacted a dispatch agency and asked them to perform a driver license query on an individual who had the same last name as Officer C. The dispatcher asked Officer C if the inquiry was for personal reasons and he indicated it was not. The dispatcher was concerned about the possible misuse of BCI records and reported the incident. During an administrative interview with his agency, Officer C admitted he contacted dispatch to run a driver license check on his daughter to verify her social security information for a passport she was applying for.

During a *Garrity* interview with POST, Officer C admitted he contacted dispatch and asked them to perform a driver license query to confirm his daughter's social security number. The case was screened with the county attorney; however, the prosecutor declined to file charges. Officer C retained his employment with his agency.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer C receive a letter of caution from the POST Council. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue Officer C a letter of caution.

### **Case 4**

Officer D was investigated for reckless burning. Officer D purchased a gasoline container and two propane gas cylinders, then fueled his vehicle and drove to an empty parking lot. Officer D lit himself and the interior of his vehicle on fire in an attempt to cause the vehicle to explode and kill him. When the vehicle did not explode, Officer D escaped the burning vehicle and rolled in the nearby snow to extinguish the

flames on his person. An off-duty police officer encountered Officer D and attempted to pull him away from the vehicle fire, but Officer D resisted the assistance. The off-duty officer eventually dragged Officer D away from the burning vehicle and remained with him until local officers and medical arrived.

During *Garrity* interviews with his agency and POST, Officer D admitted to lighting his vehicle on fire with the intention of killing himself by causing his vehicle to explode. The POST investigation determined Officer D's actions constituted reckless burning as provided in Utah Code Ann. § 76-6-104, a class A misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended the certification of Officer D be suspended for three years. Officer D's attorney was present at the POST Council meeting and addressed the Council in Officer D's behalf. After hearing POST's findings, and hearing from Officer D's attorney, the Council rejected POST's recommendation and instead voted to suspend Officer D's peace officer certification for one and a half years.

### **Case 5**

Officer E was investigated for providing unauthorized medication to a prisoner at a correctional facility. Officer E was working his assigned shift as a correctional officer at a county jail when a prisoner was brought in and complained of alcohol withdrawal. The prisoner asked Officer E for prescription medication. Officer E provided the prisoner with the requested medication without seeking approval through the jail's medical staff. Officer E resigned from his agency. Officer E entered a plea in abeyance to an amended charge of transporting weapons, ammo, etc. in secure areas or facility, a class A misdemeanor.

During a POST *Garrity* interview, Officer E admitted providing medication to the prisoner without prior approval and said he was complacent in his duties. The POST investigation determined Office E's actions constituted providing medication to an offender at a correctional facility in violation of correctional facility policy a 3<sup>rd</sup> degree felony.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended the certification of Officer E be suspended for four years. Officer E was present at the POST Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer E, the Council rejected POST's recommendation and instead voted to suspend Officer E's peace officer certification for two years.

### **Case 6**

Officer F was investigated for engaging in sexual conduct with a male officer, while on duty. Officer F and the male officer had sexual intercourse in Officer F's vehicle, at least three times, while it was parked in a gated government maintenance yard. The maintenance yard was located near her department office, at the state park where Officer F was assigned to work. The sexual intercourse occurred after Officer F and the male officer finished working a night shift together, checked off duty with dispatch, and met in the gated maintenance yard at her vehicle. The gated maintenance yard is where the department parks their law enforcement vehicles while not in use. Officer F retained her employment.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F, through her attorney, stipulated to some of the facts contained in the notice of agency action, but requested a hearing before an

administrative law judge (ALJ) to determine whether the maintenance yard where she engaged in sexual conduct constituted a “law enforcement facility.” The matter was submitted to the ALJ for summary judgment. The ALJ subsequently issued findings of facts and conclusions of law stating the maintenance yard did qualify as being “on the property of a law enforcement facility” and that Officer F violated UCA 53-6-211 as outlined in the notice of agency action.

POST recommended the certification of Officer F be suspended for three and a half years. Officer F and her attorney were present at the Council meeting and addressed the Council. After hearing POST’s findings, and hearing from Officer F, and her attorney, the Council rejected POST’s recommendation and instead voted to suspend Officer F’s certification for three months.

### **Case 7**

Officer G was arrested and charged with driving under the influence of alcohol. Officer G was on duty and driving his department issued vehicle while consuming alcoholic beverages. Witnesses called police dispatch to report his erratic driving behaviors. The investigating officer observed a half empty bottle of vodka in the front passenger seat, next to Officer G. After talking with Officer G, the investigating officer determined Officer G was impaired and arrested him for suspicion of DUI. Officer G refused to submit to a chemical test and a warrant for his blood sample was obtained. The blood sample measured .19 mg/dL of ethyl alcohol. Investigating officers also located two loaded handguns in Officer G’s vehicle. Officer G entered a plea of Guilty to the charge of impaired driving, a class B misdemeanor.

During *Garrity* interviews with his agency and POST, Officer G admitted to driving under the influence of alcohol. Officer G stated he drove his department vehicle to the liquor store after a work meeting. Officer G purchased a pint of vodka and a pint of gin, and then began to drive to a work-related training in the southern part of the state. Officer G stopped along the way to drink the gin and discard the empty bottle. Officer G stated he continued driving, was stopped by a deputy for speeding, and received a verbal warning. Officer G admitted he knew he was intoxicated at that point, but continued to drive. Officer G said he pulled over and consumed some of the vodka. Officer G said he remembers being approached by responding officers and he had no recollection after that.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended the certification of Officer G be suspended for two and a half years. Officer G’s attorney was present at the Council meeting and addressed the Council on behalf of Officer G. After hearing POST’s findings, and hearing from Officer G’s attorney, the Council approved POST’s recommendation and voted to suspend Officer G’s certification for two and a half years.

### **Case 8**

Officer H ran his former sister-in-law’s name through BCI/UCJIS without a legitimate law enforcement purpose. Officer H was in training, learning about a type of search query on BCI/UCJIS. Officer H was given instructions to run a fictitious test name, which has been set up by BCI for training purposes. Officer H did not follow instructions and instead ran his own last name, which produced a list of people he was related to. Officer H clicked on his former sister-in-law’s name out of curiosity. This search produced protected information on his former sister-in-law’s correctional involvement.

Officer H retained his employment and was given a letter of counsel by his agency. Criminal charges were not referred on Officer H.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer H receive a letter of caution from the POST Council. Officer H was present and addressed the Council. After hearing POST's findings, and hearing from Officer H, the Council ratified POST's recommendation and voted to issue Officer H a letter of caution.

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*Special Note: The disciplinary proceedings of the POST council are administrative and are independent from any criminal prosecution. POST Investigations is charged with investigating misconduct to determine if there is clear and convincing evidence that a peace officer or certified dispatcher has violated Utah Code 53-6-211 or 53-6-309. The fact that a peace officer or certified dispatcher has been convicted of a criminal violation, or has plead guilty to a criminal violation, is in and of itself clear and convincing evidence that the peace officer or certified dispatcher has violated Utah Code 53-6-211(1)(d) or 53-6-309(1)(d). Where there is clear and convincing evidence to show a violation has taken place POST is obliged to bring that matter to the Council. The POST Council has the statutory authority to determine what the appropriate sanction should be.*

For reference we have included below Utah Code 53-6-211 and a portion of Administrative Rule R728-409. The POST Council Disciplinary Guidelines can be found online at <http://publicsafety.utah.gov/post/>. Please direct any questions regarding the statute or the POST investigation process to [support@utahpost.org](mailto:support@utahpost.org)

**53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.**

- (1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:
  - (a) willfully falsifies any information to obtain certification;
  - (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
  - (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
  - (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
  - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
  - (f) engages in sexual conduct while on duty; or
  - (g) is certified as a law enforcement officer, as defined in Section 53-13-103 and is unable to possess a firearm under state or federal law.
  
- (2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).
  
- (3)
  - (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).
  - (b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.
  - (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
  - (d) (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.

- (ii) If a peace officer asserts an affirmative defense, the peace Dispatcher Has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
  - (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.
  - (f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.
  - (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.
- (4) (a) The council shall review the findings of fact and conclusions of law and the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.
- (b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:
- (i) has a personal bias for or against the officer;
  - (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
  - (iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.
- (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

**R728-409-3. Definitions.**

- A. Terms used in this rule are defined in Section 53-6-102.
  - B. B. In addition:
3. "on duty" means that a peace officer is:
- a. actively engaged in any of the duties of his employment as a peace officer;
  - b. receiving compensation for activities related to his employment as a peace officer;
  - c. on the property of a law enforcement facility;
  - d. in a law enforcement vehicle which is located in a public place; or
  - e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;
6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.